



IDAHO

DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

June 19, 2008



Re: Opinion Request

Dear Mr. [REDACTED]:

This is in reference to your request for an "opinion" from this Department as to whether the exchange of a minority percentage of the equity of an owner occupied residence as payment for the completion of a home improvement project (TIC ROOF Program) would be considered a security under the Idaho Uniform Securities Act (2004) (IUSA). You have provided us a brief written summary of the [REDACTED] deal flow and a Tenancy in Common Agreement (TIC Agreement) which captures the terms and conditions of a typical transaction.

Background

In addition to the initial information provided, you have provided written responses to the Department's questions on May 14, 2008 and most recently on June 2, 2008. In responding to your request for an opinion, we understand that the June 2, 2008 response represents the most accurate description of the program.

TIC ROOF Program

[REDACTED] is the facilitator or promoter of the TIC ROOF Program. Under the program, it is our understanding that a homeowner and a contractor will agree to a fixed cost bid for a clearly defined home improvement project under the terms of a TIC Agreement. The homeowner will convey an ownership percentage in his or her home to an "investor" in the form of a tenancy-in-common interest in lieu of paying cash for the cost of a remodeling project. If accepted by the homeowner, the contractor will agree to finance the home improvements based on written terms and conditions stipulated within the TIC Agreement.

Under the terms of TIC Agreement, the "investor" will purchase a fractionalized and undivided minority interest in the homeowner's property. The "investor's" fractionalized ownership interest is determined by the "base investment" (amount investor paid for interest) or the "investor's" percentage interest multiplied by the gross sales price or appraisal of the property. The TIC Agreement requires sale proceeds to be distributed to the "investor" based on the investment amount or the fractionalized interest calculation, whichever is greater.

SECURITIES BUREAU

Bureau Chief – Marilyn T. Chastain

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<http://finance.idaho.gov>

The Agreement appears somewhat one-sided and mainly protects the interests of the "investor". It appears the homeowner's right to control and dispose of his or her property after entering into a TIC Agreement is restricted. The TIC Agreement requires the homeowner to essentially manage the property by paying all expenses associated with maintenance, repair, insurance and taxes. The homeowner may sell the property only with "investor" approval and the "investor" has the right of first refusal on any purchase offer and, at its option, may match any offer of sale.

Marketing

Initially, you have indicated the program will only be marketed to people who own their homes free and clear, then later offered to those who have mortgages on their homes. The TIC Agreement references mortgage assumption by the "investor". The Department cannot opine concerning the probability of the "investor" being able to assume a portion of the mortgage. However, it is the Department's understanding that a typical mortgage is non-assumable.

Idaho Uniform Securities Act (2004) (IUSA)

The IUSA defines "security" under § 30-14-102(28). This definition includes notes, evidence of indebtedness and includes certificates of interest or participation in a profit sharing agreement. The TIC ROOF Program interests meet the above criteria as the "investor" can share in any gain in valuation and is allocated potential profits according to a fractional undivided ownership interest in the property.

Under § 30-14-102(28)(d) "Security" includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors. Under the TIC ROOF Program, homeowners and "investors" (both of whom we consider investors) who participate in the program will have their fortunes interwoven with Fractional Equities, LLC, the building contractor and each other.

Another requirement of Section 30-14-102(28)(d) is that there is an expectation of profits to be derived primarily from the efforts of a person other than the investor. In the homeowner's case, the homeowner expects a profit which will result from the potential appreciation of the person's equity interest in his or her home which has been enhanced by the home improvement project. Likewise, the "investor" also benefits from the property improvements and possible market gains. In both instances the profit potential is due primarily to the efforts of others, namely [REDACTED], the contractor and general real estate market conditions.

In summary, it is the Department's opinion that the TIC ROOF Program interests represent an investment contract with the homeowner and "investor" being investors in the program.

For your reference, the Act and Rules may be found on the Department's website at finance.idaho.gov.

Conclusion

Based on the description included within your correspondence and in the TIC Agreement, it is the Department's position that the sale of interests in the TIC ROOF Program will constitute a securities offering.

Any offer and sale of a security must either be registered or exempt from registration under state and federal securities laws. As such, the sale of [REDACTED] interests must be registered or qualify for exemption from registration under the IUSA and possibly at the federal level.

Please be aware that although securities may qualify for exemption from registration, the anti-fraud provisions of both the IUSA and applicable federal securities law will still apply to the transaction. Any material misstatement of fact or misrepresentation to any potential investor will be considered a fraudulent act.

This opinion is premised on the information provided to the Department by [REDACTED]. If the facts in this matter change, or are different than represented, our opinion may also change.

If you have questions or need further clarification, please contact the undersigned.

Sincerely,



Walt Bitner
Securities Analyst

Walt Bitner

From: Walt Bitner
Sent: Wednesday, May 28, 2008 4:09 PM
To: [REDACTED]
Subject: TIC ROOF Program

[REDACTED]
Mr. [REDACTED]:

As discussed, please provide a written response to the following:

1. Are the contractor and the investor in a TIC ROOF transaction the same person or party?
2. As to the 2% administrative fee to be paid by the homeowner:
 - a. Must it be paid up front at the inception of the transaction?
 - b. Can the fee be financed? If so, who would likely do the financing?
 - c. Who will the administrative fee be paid to?
3. If a home is encumbered when a TIC ROOF agreement is entered into, how will the TIC ROOF affect the lender's and borrower's rights?
 - a. Would the lender's ability to initiate foreclosure in the event of the borrower's default be affected?
 - b. Would the TIC ROOF agreement likely trigger any "due on sale" clause in the homeowner's deed of trust or mortgage?
4. If the investor pledges or sells the investor's TIC interest, how would that effect the homeowner and any mortgage lender?
5. If the investors will not be the contractor, what persons or parties would likely be the investors in these transactions?
6. If the investor is not the contractor, will the investor pay the agreed upon price of the remodel project to the contractor at the inception of the transaction?
7. If the homeowner is not satisfied with the contractor's work, what recourse does the homeowner have to:
 - a. the contractor?
 - b. the investor?
8. If the homeowner becomes dissatisfied with the contractor prior to completion of the project, can the homeowner terminate the contractor's services? If so, how would this affect the TIC ROOF agreement and the parties interests under it?
9. In the response to our question #17, it states that "the portion of their (homeowner's) equity that induces the investor to invest in this property is recovered through appreciation of their TIC percentage." If housing prices did not rise after the TIC ROOF agreement is entered into or they fell, we assume this statement would not apply. Will this potential scenario be disclosed to the homeowner?
10. In the response to our question #18, it provides that the homeowner will receive full disclosure of the actual cost and benefits. Will the homeowner receive full disclosure of potential risks and downsides to the program?

6/4/2008

11. What is necessary for a homeowner to qualify for a TIC ROOF transaction?
12. Will the TIC ROOF program be marketed to investors? If so, who will do the marketing and who will it be marketed to?
13. In Section 4.2 of the TIC ROOF agreement, it provides that the investor has paid the homeowner \$_____ toward the purchase of ____% interest in the property. Will funds be paid directly to the homeowner in these transactions?
14. Have mortgage lenders been contacted to see if they would likely consent to a TIC ROOF transaction where they have an outstanding mortgage or second lien loan on the property?
15. If the investor transfers or encumbers his interest in the property, what is the potential impact on:
 - a. the homeowner?
 - b. an existing mortgage lender?
16. The TIC ROOF agreement provides that in the event of the homeowner's default, the homeowner may be required to convey his or her interest to the investor. Under this scenario, what happens to the homeowner's equity interest in the property?
17. In Section 11.4 of the TIC ROOF agreement, the only specified event of investor default is if the investor uses the TIC interest as collateral and foreclosure proceedings are filed and started by the investor's lender. The agreement does not indicate what the homeowner's remedies would be in this scenario. Please explain how the homeowner would protect and preserve their interest in this circumstance.
18. Could there be more than one investor in a TIC ROOF transaction? If so, would multiple investors have equal contributions and ownership interests in the property?

Please email your responses to me. Thank you for your cooperation.

Walt Bitner, Securities Analyst
Idaho Department of Finance

Walt Bitner

From: [REDACTED]
Sent: Wednesday, May 14, 2008 5:29 PM
To: Walt Bitner
Cc: Patty Highley
Subject: RE: [REDACTED] - questions
Attachments: IDOF [REDACTED] 5-21-08.doc

Walt Bitner
Securities Analyst
Idaho Dept. of Finance

Walt,

Here are answers to your list of questions. Please let me know what else you need.

Thanks,

[REDACTED]

From: Walt Bitner [mailto:walt.bitner@finance.idaho.gov]
Sent: Wednesday, May 07, 2008 1:19 PM
To: [REDACTED]
Cc: Patty Highley
Subject: [REDACTED] - questions

[REDACTED]

Mr. [REDACTED]:

As we discussed, I have attached a request for information and documents needed to fully understand and properly analyze the TIC ROOF program.

<<Fractional Equities llc Questions 5-21-08.doc>>

Please send via email the requested information to my attention in the Securities Bureau within the Department of Finance.

I will be out of the office from May 9-16. While I'm out, send email to me and cc: Patty Highley at phighley@finance.idaho.gov.

Please let us know by email if you need to fax information to us. Our fax number is 332-8099.

Thank you for your cooperation.

Walt Bitner, Securities Analyst
Idaho Department of Finance
332-8076

6/16/2008

RECEIVED

APR 01 2008

DEPT. OF FINANCE
STATE OF IDAHO

Application for Review

Submitted to the:
Idaho Department of Finance

March 31, 2008

Re: Tenant-in-Common (TIC) Residential Owner Occupied Fractional-ownership
(ROOF) Home Improvement Financing (see attached).

The essential transaction is that of the exchange of a minority percentage of the equity of an owner occupied residence for the execution of a home improvement project.

The steps to establishment of a TIC ROOF are typically the following:

1. The Homeowner requests a home improvement Contractor provide a bid on a home improvement project;
2. The Contractor provides a fixed sum bid for a clearly defined project scope;
3. The Homeowner accepts the bid;
4. The Contractor offers to finance the home improvement in exchange for an undivided interest as a tenant-in-common in the residential property as agreed to in a Tenancy In Common Agreement and recorded as a warranty deed;
5. The Homeowner accepts the proposal, enters into the Agreement (see attached) and executes a warranty deed in favor of the Contractor, now the Investor;
6. The Investor records the warranty deed;
7. After some period of time elapses, the Homeowner sells the residential property according to the terms of the Agreement and distributes to the Investor the Investor's share of the sale of the property according to the terms of the ROOF Agreement.

Please note that there are additional applications inherent in the essential transaction and that these will be addressed with a future Application for Review. If you need additional information about this application of a ROOF TIC Agreement or if any of the following is not clear, please let me know and I will submit any information you need to verify that this method of financing home improvement is within the bounds of Idaho finance law and regulation and disclose to me whatever administrative compliance is required.

In addition, the above transaction assumes that there is no deed of trust or promissory note that encumbers the residential property prior to entering into the ROOF Agreement.

I look forward to your evaluation.

Sincerely,



June 2, 2008

Mr. [REDACTED]

As discussed, please provide a written response to the following:

1. Are the contractor and the investor in a TIC ROOF transaction the same person or party?

No, the Contractor may not be the Investor. To qualify as a [REDACTED] 'Contractor', it must be a corporate entity that is hired to perform a specific remodel or home improvement. An individual owner, partner, shareholder or member of the "Contractor" entity may be an investor but not the 'Contractor' itself. During development of the TIC ROOF business, while Fractional Equities, llc is establishing the first 6 to 10 ROOFs, Investors will be personal contacts, 'family & friends.'

2. As to the 2% administrative fee to be paid by the homeowner:

a. Must it be paid up front at the inception of the transaction?

50% of the '2% administrative fee' must be paid to initiate the homeowner qualification process. The balance is due when the TIC ROOF agreement is signed.

b. Can the fee be financed? If so, who would likely do the financing?

The fee could be financed but not by [REDACTED]. Another source of financing secured by the Homeowner would be necessary.

c. Who will the administrative fee be paid to?

The administrative fee would be paid to [REDACTED] for the work of qualifying the homeowner, the home and the homeowner's project on the Investor's behalf and for securing an Investor for this specific project.

3. If a home is encumbered when a TIC ROOF agreement is entered into, how will the TIC ROOF affect the lender's and the borrower's rights?

The intention of the TIC ROOF is that it not effect the borrower's or lender's rights but acknowledge and protect them.

a. Would the lender's ability to initiate foreclosure in the event of the borrower's default be affected?

No. The lender's loan to the homeowner is secured only by the percentage of the property that is owned by the Homeowner and the TIC ROOF Investor is uninvolved in that transaction. It would be in the Investor's (and therefore the lender's) best interest for the Investor to assume the loan on the Homeowner's portion of the property in the event of a default. This should greatly reduce the likelihood of a foreclosure happening.

b. Would the TIC ROOF agreement likely trigger any "due on sale" clause in the homeowner's deed of trust or mortgage?

Each encumbrance has its own terms and one or more of those terms may disqualify the homeowner from entering into a TIC ROOF without a remedy being found for that term(s). In the event that the existing encumbrance(s) prevent a TIC ROOF, the balance of the administrative

fee would be voided. It is anticipated that the issue of irresolvable encumbrances be identified and addressed before the administrative fee is paid.

4. **If the investor pledges or sells the investor's TIC interest, how would that affect the homeowner and any mortgage lender?**

The ROOF agreement protects the homeowner and any mortgage lender from any affect.

5. **If the investors will not be the contractor, what persons or parties would likely be the investors in these transactions?**

It is expected that the typical Investor would be the same investor attracted to residential property but are reluctant to take on the responsibilities and expenses of being a landlord with tenants. There may be other types of investors discovered as TIC ROOFs become familiar to the marketplace.

6. **If the investor is not the contractor, will the investor pay the agreed upon price of the remodel project to the contractor at the inception of the transaction?**

No. The Investor funds the project by depositing the full amount for the project into a trust account managed by [REDACTED] that disburses the funds according to payment milestones established in the construction agreement and homeowner approval of the work completed to that point.

7. **If the homeowner is not satisfied with the contractor's work, what recourse does the homeowner have to:**

- a. **The contractor?**

To withhold approval for the payment due until the work is satisfactory.

- b. **The investor?**

There is no homeowner recourse to the Investor. See a.

8. **If the homeowner becomes dissatisfied with the contractor prior to completion of the project, can the homeowner terminate the contractor's services? If so, how would this affect the TIC ROOF agreement and the parties' interests under it?**

No, the Homeowner may not terminate the Contractor's services. The Contractor's agreement is with the Investor. However, by refusing to continue approval for payment to the Contractor, the Homeowner effectively stops the project requiring the Investor, or its agent, to resolve whatever issues the Homeowner has with the Contractor, up to and including termination of the current Contractor's services and providing a replacement Contractor.

9. **In the response to our question #17, it states that "the portion of their (homeowner's) equity that induces the investor to invest in this property is recovered through appreciation of their TIC percentage." If housing prices did not rise after the TIC ROOF agreement is entered into or they fell, we assume this statement would not apply. Will this potential scenario be disclosed to the homeowner?**

Your assumption is correct and the possibility of this potential scenario will be disclosed to the homeowner

- 10. In the response to our question #18, it provides that the homeowner will receive full disclosure of the actual cost and benefits. Will the homeowner receive full disclosure of potential risks and downsides to the program?**

Yes, to the extent that [REDACTED] understands and is aware of those risks and downsides.

- 11. What is necessary for a homeowner to qualify for a TIC ROOF transaction?**

The primary qualification is of the property itself:

- A current appraisal
- A history of acceptable appreciation
- A neighborhood with a history of acceptable appreciation
- Acceptable existing encumbrances
- Well maintained & in acceptable condition

The secondary qualification is of the Homeowner:

- Acceptable credit score
- Acceptable existing equity in the property
- Sufficient financial resources to fund the Administration Fee

The tertiary qualification is of the home improvement project:

- Acceptable contribution to the value of the property
- Does not exceed the limit of improvement to its future value or salability

Each of these must either contribute to or not be an impediment to an attractive return on the Investor's investment. The actual 'bench marks' are still being established and will be sensitive to Investor concerns and requirements and Homeowner specifics.

- 12. Will the TIC ROOF program be marketed to investors? If so, who will do the marketing and who will it be marketed to?**

Yes. [REDACTED] will do the marketing and the marketing will be shaped by the initial responses of the market to TIC ROOFs to date. (see #5.) However, marketing the TIC ROOF program to Investors will solely be 'word of mouth' until the marketing program is vetted by the Idaho Department of Finance.

- 13. In Section 4.2 of the TIC ROOF agreement, it provides that the investor has paid the homeowner \$____ toward the purchase of ____% interest in the property. Will funds be paid directly to the homeowner in these transactions?**

No. All investor funds will be paid to [REDACTED] which will disburse them on behalf of the Investor according to the terms of that TIC ROOF.

- 14. Have mortgage lenders been contacted to see if they would likely consent to a TIC ROOF transaction where they have an outstanding mortgage or second lien loan on the property?**

Yes. [REDACTED] have been contacted locally. None of them have approved participation in a TIC ROOF. However, pending the evaluation of the Idaho Department of Finance and further development of the TIC ROOF process, they will not be able to do so. (I'm aware of the difficulties and am working on getting their approval.)

- 15. If the investor transfers or encumbers his interest in the property, what is the potential impact on:**

- a. The homeowner? None
- b. An existing mortgage lender? None

16. The TIC ROOF agreement provides that in the event of the homeowner's default, the homeowner may be required to convey his or her interest to the investor. Under this scenario, what happens to the homeowner's equity interest in the property?

The most extreme scenario would be the complete loss of the homeowner's equity to the Investor. The homeowner is only required to convey interest to the investor in the event that there is no other remedy for the default. A remedy most likely to be relied upon by the Homeowner would be to borrow against the Homeowner's equity in the Homeowner's share of the property.

17. In Section 11.4 of the TIC ROOF agreement, the only specified event of investor default is if the investor uses the TIC interest as collateral and foreclosure proceedings are filed and started by the investor's lender. The agreement does not indicate what the homeowner's remedies would be in this scenario. Please explain how the homeowner would protect and preserve their interest in this circumstance.

The TIC ROOF agreement protects the Homeowner from Investor default and makes available to the Homeowner the same final remedy it makes to the Investor: assumption of the debt in exchange for ownership. For instance, the Investor may assume the Homeowner's mortgage and doing so receives whatever equity the Homeowner has. The Homeowner may, in turn, assume the Investor's obligation in exchange for whatever equity remains in the Investor's TIC ROOF.

18. Could there be more than one investor in a TIC ROOF transaction? If so, would multiple investors have equal contributions and ownership interests in the property?

Only one Investor owns a particular TIC ROOF. However, that Investor may be an entity composed of multiple individuals. The contributions and ownership interests comprising the Investor entity has no effect on the TIC ROOF agreement and the Homeowner.

Please email your responses to me. Thank you for your cooperation.

Walt Bitner, Securities Analyst
Idaho Department of Finance